IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4954 of 2006
WITH
SPECIAL CIVIL APPLICATION No. 4955 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAWAHARBHAI D.PATEL THR'PAH ABDUL RAZAK HAJI LATIF - Petitioner(s)

Versus

STATE OF GUJARAT THR'MAMLATDAR & KRUSHI PANCH & 2 - Respondent(s)

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Appearance :
MR DN KIRATSATA for Petitioner(s) : 1,
MR DIPEN DESAI AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR PRANAV V SHAH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/06/2006

CAV JUDGMENT

1. As the common question of facts and law arises in both these petitions, the same are being disposed of by this common judgement and order.
2. At the outset, it is required to be noted that this matter came to be adjourned time and again and all through out, the learned advocate appearing on behalf of the respective petitioners remained absent. In view of the fact stay was operating against the State Government and the present petition being against the show cause notice only and further proceedings were stayed, Mr.Desai, learned AGP insisted for hearing of both the petitions. Lastly, the matters were placed on 27/4/2006 and it was reported that there was a sick-note of learned advocate appearing on behalf of the respective petitioners and therefore, this Court passed the following order;

> There is a sick-note of ld.Ad. for the petitioner. Shri Dipen Desai, ld AGP, has prayed for hearing. However, in the interest of justice, S.O. to 29th April, 2006. To be placed in Bord-1. On that date

irrespective of sick-note or leave-note the matter will be decided on merits. Ad-interim relief to continue till then."

3. That on 29/4/2006, inspite of the aforesaid order, nobody remained present on behalf of the respective petitioners and therefore, this Court has taken the aforesaid petitions for hearing ex-parte.

4. It appears from the record and pleadings in the petition that by way of the present petitions the respective petitioners have challenged the show cause notices dtd.8/2/2006 issued in Tenancy Case NO.27 and 24 of 2006, by which, the petitioners are directed to appear before the the Mamlatdar and ALT, Dabhoi on 27/2/2006 and are called upon to show cause for breach of sec.2(6) and 63 of the Act read with sec.84(C) of the Bombay Tenancy Act (hereinafter referred to as "the Act" for short). As such, there are no grounds mentioned in the petitions on which the show cause notices are challenged. However, it appears that as earlier with regard to the very land in question, this Court allowed Special Civil Application No. 3890 of 1990 quashing and setting aside the order passed by the authorities taking the order of Non-Agricultural Use Permission under suo-

motu revision and the said Special Civil Application was allowed on the ground that the authority initiated the proceedings after unreasonable delay. It is required to be noted that at present the proceedings are at the stage of show cause notice. By issuing the impugned notices, the petitioners are called upon to appear before the the Mamlatdar and ALT, Dabhoi for breach of sec.2(6) and 63 of the Act and the petitioners will be given ample opportunity to represent their case and at that time, the petitioners can raise all the grounds available to the petitioners inclusive of the grounds raised in the memo of these petitions including the ground that the proceedings are initiated after unreasonable delay. Normally, Special Civil Applications against the show cause notices are not entertained and the parties are relegated to appear before the concerned authority unless the proceedings / action is absolutely wholly without jurisdiction. It is not the case of the petitioners in the petitions that the proceedings initiated pursuant to the show cause notice dtd.8/2/2006 for breach of sec.2(6) and 63 of the Act are without jurisdiction. Under the circumstances, the present petitions against the show cause notice being

premature, are not entertained.

5. However, it will be open for the petitioners to raise all the contentions available to them under the law inclusive of the plea of limitation and /or exercise of the powers beyond reasonable period.

The Mamlatdar and ALT, Dabhoi is directed to consider all the submissions that may be made by the petitioners and to pass appropriate order in accordance with law and on merits.

6. With the aforesaid observations and directions, both the petitions are dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

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